

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 958 of 2011**

Sant Kumar Markam, aged about 26 years, S/o Anandram Markam,
By Occupation Service in Petrol Pump, R/o Village Bhodiya, Thana-
Bhanupratappur, Distt.-Kanker, Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through P.S. Korar, Distt.-Uttar Bastar, Kanker,
Chhattisgarh.

---- Respondent

For the Appellant	:	Shri Parag Kotecha, Advocate.
For the Respondent/ State:		Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****18.01.2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 3.12.2011 passed by the Learned Sessions Judge, District Uttar Bastar Kanker, Chhattisgarh in Sessions Case No. 100 of 2010, whereby and whereunder, the learned Sessions Judge has convicted the appellant under Sections 363, 366 and 376 of the Indian Penal Code (for short 'IPC') and sentenced him to undergo rigorous imprisonment for a period of 5 years, 5 years and 10 years and to pay fine of Rs.500/-, Rs.500/- and Rs.1,000/-, in default of payment of fine, to further undergo additional RI for one month, one month and three months, respectively.

2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. The facts of the case, in brief, are that the prosecutrix (PW-7) is a minor girl on the date of incident i.e. on 25.3.2010. On the said date at about 10:00 pm when she went to answer the call of nature along with Karonda Bai (PW-8), the appellant accompanied with co-accused Prahlad caught hold of her and Karonda Bai (PW-8) and after dragging them towards nala, thereafter the prosecutrix (PW-7) was raped by the appellant. The appellant then forced the prosecutrix to sit on his bicycle and took her to village Bhodiya. Thereafter, she was taken to Bhanuprattapur (appellant's friends house) where she was asked to take food. Thereafter, the appellant left the prosecutrix (PW-7) at the house of her maternal grandfather, where she narrated about the incident and the FIR (Ex. P/13) was lodged.

4. Statements of the witnesses were recorded and on completion of the investigation, the appellant was charged for the offence punishable under Sections 363, 366 and 376 of the IPC. The appellant pleaded innocence and denied the charges. On his denial of charges, the trial was conducted. The prosecution examined as many as 11 witnesses. The accused in his statement under Section 313 Cr.P.C. has claimed, that he has been falsely implicated in the case, but he has led no evidence in his defence. After giving opportunity of hearing and leading evidence to the prosecution and defence, the impugned judgment has been passed by the trial Court, in

which the appellant has been convicted and sentenced as mentioned above. Hence, this appeal.

5. The grounds taken in the appeal by the appellant, are that the defence put-forth by the appellant was not considered by the trial Court. There are many contradictions, omissions and improvements in the statements of the prosecution witnesses, which affect the reliability of the prosecution evidence. Hence, the appellant urged that the conviction is bad in law.

6. Learned counsel for the appellant submits that the whole case of the prosecution rests on the evidence of the prosecutrix (PW-7) alone and the statement of the prosecutrix before the Court below cannot be regarded as reliable and trustworthy. The medical report of Dr. Smt. Snigdha Das (PW-1) also does not support the case of the prosecution and no opinion about forceful sexual intercourse with the prosecutrix (PW-7) was given. Apart from that, the prosecutrix was in the company of various persons during that period as it is alleged that she was in abduction, but there is no statement that she complained about the offence that was committed against her to any of the person. It is also submitted that there is two days delay in lodging the FIR. Hence, for these reasons, the appellant should have been given the benefit of doubt and acquitted of the charges framed against him.

7. On the other hand, Learned State counsel opposes the submissions made by counsel for the appellant and submits that the statement of the prosecutrix is reliable and un-controverted in her cross-examination. Neither any question has been put to her in cross-examination regarding delay in lodging the FIR, nor any question was put to her to find about the conduct of

the prosecutrix during the period in which she was in-captivity against the appellant. Hence, the case is made out against the appellant.

8. The only point for determination of this appeal is as to whether the statement of the prosecutrix (PW-7) is reliable and trustworthy and the prosecution has proved its case beyond reasonable doubt.

9. I have heard learned counsel appearing for the parties at length and also perused the evidence available on record.

10. The prosecutrix (PW-7) has made the statement in her examination-in-chief, that she was abducted and forcefully taken by the appellant and then raped. It is also stated that she was forced to accompany him to various places and when she was released by the appellant on the next day, she met with her parents and then she went to lodge the FIR. In cross-examination, her statement that she was abducted and raped by the appellant has remained unrebutted and there is no other statement in her cross-examination to show that she had been a consenting party. Further, no question has been put to her to explain the delay in lodging the FIR and also no question has been put to her to explain as to why she has not complained about the incident to anyone, when she met with other persons during the period of captivity. Karonda Bai (PW-8), a hearsay witness and Thanwar Singh (PW-10), father of the prosecutrix stated that they were informed by the prosecutrix (PW-7) that she was abducted and raped by the appellant and their statement has remained un-controverted in their cross-examination.

11. Although, Dr. Smt. Snigdha Das (PW-1) has stated that no opinion can be given about rape, but it has been reported that on examination, it was found that sexual intercourse had taken place with the prosecutrix, according to the report Ex. P/1 given by her. As there is clear statement of the prosecutrix that she had not been a consenting party and she was forcefully raped by the appellant, even though there is no injury found in her private parts, this by itself is not sufficient to falsify her statement. On analyzing the statements of these witnesses for the purposes of giving finding against the appellant, I am of the opinion that no error has been committed by the trial Court in convicting the appellant for the offences as aforesaid.

12. Learned counsel for the appellant further submits that the appellant is already in jail from 30.3.2010 to 02.08.2010 and thereafter, on 3.12.2011 he was taken into custody and still he was in custody i.e. more than six years. Hence, it is prayed that by reducing the sentence imposed upon the appellant, he may be released.

13. Considering the aforesaid facts and circumstances of the case, it appears that the appellant has made out a case for reduction of sentence. Accordingly, this appeal is allowed in part.

14. Consequently, the appeal filed by the appellant is allowed in part. The conviction awarded against the appellant is hereby affirmed. Fine sentence awarded by the trial Court is also hereby affirmed. So far as substantive jail

sentence is concerned the sentence is modified and instead RI for 10 years, the appellant is sentenced with RI of seven years.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi